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No. 83-1190

In the Supreme Court of the United States

OCTOBER TERM, 1983

ATHENS LUMBER COMPANY, INCORPORATED,
AND
JOHN P. BONDURANT, APPELLANTS,

v.

FEDERAL ELECTION COMMISSION, ET AL., APPELLEES.

On Appeal From the United States Court of Appeals
For the Eleventh Circuit

MOTION TO DISMISS OR AFFIRM

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FEBRUARY 22, 1984

QUESTIONS PRESENTED

(1) Whether the Court has obligatory jurisdiction of this case under the direct and expedited appeal provisions of 2 U.S.C. § 437h(b), when the district court did not certify constitutional questions to the *en banc* court of appeals pursuant to 2 U.S.C. § 437h(a), and the *en banc* court expressly stated that it had taken and decided the case under Fed. R. App. P. 35 and not under 2 U.S.C. § 437h(a).

(2) Whether the *en banc* court of appeals correctly concluded that it was bound by this Court's unanimous decision in *FEC* v. *National Right to Work Committee*, 459 U.S. ____, 103 S. Ct. 552 (1982), to uphold the constitutionality of Congress's longstanding prohibition of corporate contributions and expenditures in connection with federal elections, 2 U.S.C. § 441b.*

*The parties to this case are:
John P. Bondurant
Athens Lumber Company, Inc.
Federal Election Commission
William French Smith, in his official capacity as Attorney General of the United States

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No. 83-1190

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OCTOBER TERM, 1983

ATHENS LUMBER COMPANY, INCORPORATED,
AND
JOHN P. BONDURANT, APPELLANTS,

v.

FEDERAL ELECTION COMMISSION, et al., APPELLEES.

On Appeal From the United States Court of Appeals
For the Eleventh Circuit

MOTION TO DISMISS OR AFFIRM

The appellee Federal Election Commission respectfully moves the Court to dismiss the appeal for lack of jurisdiction, or, alternatively, to affirm the judgment of the United States Court of Appeals for the Eleventh Circuit as correctly decided, and not requiring further argument. Sup. Ct. R. 16.1(a), (c).[1]

DECISIONS BELOW

The district court decision dismissing the case for lack of a "case or controversy" under Article III, is reported at 531 F. Supp. 756 (M.D. Ga. 1982), and is reproduced at Jurisdictional Statement Appendix ("J.S.

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[1] If the Court dismisses the appeal, and construes appellants' jurisdictional statement as a petition for certiorari, the Commission requests that the Court deny the petition because no sufficiently important questions are presented to warrant this Court's review.

App.") 26-48. The court of appeals panel decision, reversing the dismissal and submitting certified questions to the *en banc* court, is reported at 689 F.2d 1006 (11th Cir. 1982), and is reproduced at J.S. App. 3-25. The *en banc* court's order determining to rehear the entire case *en banc* under Fed. R. App. P. 35, is not reported, but is reproduced in App. A, *infra*. The court of appeals' *en banc* decision, finding 2 U.S.C. § 441b to be constitutional, is reported at 718 F.2d 363 (11th Cir. 1983), and is reproduced at J.S. App. 1-2.

JURISDICTION

On October 24, 1983, the court of appeals *en banc* rendered a decision summarily rejecting a constitutional attack on 2 U.S.C. § 441b(a), which prohibits corporate contributions or expenditures in connection with federal elections. The court grounded its decision to hear the matter *en banc* in its discretionary power under Rule 35, Fed. R. App. P.[2] This Court does not, therefore, have appellate jurisdiction of this matter pursuant to 2 U.S.C. § 437h(b), but, rather, may deem appellants' jurisdictional statement as a petition for a writ of certiorari, *see* 28 U.S.C. § 2103, and may exercise jurisdiction to review the decision of the court of appeals pursuant to 28 U.S.C. § 1254(1).

STATUTES INVOLVED

2 U.S.C. § 437h provides:

> (a) *Actions, including declaratory judgments, for construction of constitutional questions; eligible plaintiffs; certification of such questions to*

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[2] Fed. R. App. P. 35 provides in part:

> (a) When Hearing or Rehearing in Banc Will Be Ordered. A majority of the circuit judges who are in regular active service may order that an appeal or other proceeding be heard or reheard by the court of appeals in banc. Such a hearing or rehearing is not favored and ordinarily will not be ordered except ... when the proceeding involves a question of exceptional importance.

courts of appeals sitting en banc. The Commission, the national committee of any political party, or any individual eligible to vote in any election for the office of President may institute such actions in the appropriate district court of the United States, including actions for declaratory judgment, as may be appropriate to construe the constitutionality of any provision of this Act. The district court immediately shall certify all questions of constitutionality of this Act to the United States court of appeals for the circuit involved, which shall hear the matter sitting en banc.

(b) *Appeal to Supreme Court; time for appeal.* Notwithstanding any other provision of law, any decision on a matter certified under subsection (a) of this section shall be reviewable by appeal directly to the Supreme Court of the United States. Such appeal shall be brought no later than 20 days after the decision of the court of appeals.

(c) *Advancement on appellate docket and expedited disposition of certified questions.* It shall be the duty of the court of appeals and of the Supreme Court of the United States to advance on the docket and to expedite to the greatest possible extent the disposition of any matter certified under subsection (a) of this section.

2 U.S.C. § 441b is reproduced in App. B, *infra*.

STATEMENT OF THE CASE

Appellants John Bondurant and Athens Lumber Co., Inc., the closely-held corporation of which he is president, brought suit in district court under 2 U.S.C. § 437h, seeking a declaratory judgment that 2 U.S.C. § 441b, prohibiting corporate contributions or expenditures in connection with federal elections, is unconstitutional under the first and fifth amendments.

The district court found that the suit did not involve a "case or controversy" sufficient to support federal jurisdiction under Article III of the Constitution. Accord-

ingly, the district court refused to certify constitutional questions to the court of appeals for *en banc* consideration under 2 U.S.C. § 437h(a), and dismissed the case. (J.S. App. 33-34, 48).

A panel of the court of appeals reversed the district court's dismissal of the case, holding that plaintiff Bondurant presented a justiciable controversy, and that as an "individual eligible to vote ... for the office of President" he had statutory standing under § 437h(a). Although the court found that the Athens Lumber Company was not a proper plaintiff under section 437h, it nevertheless ruled that plaintiff Bondurant could assert claims on its behalf. Rather than remanding the case to the district court for further proceedings, however, the panel itself referred eight constitutional questions adopted from appellants' pleadings to the court of appeals *en banc* (J.S. App. 23-25).[3]

On November 10, 1982, the Federal Election Commission ("Commission" or "FEC") filed a motion to remand the case to the district court, arguing that a factual record was necessary for proper decision of these issues and that 2 U.S.C. § 437h(a) authorized only the district court to certify questions to the *en banc* court of appeals. On February 7, 1983, the court ordered that the entire case be reheard *en banc*, but by a majority vote of the sitting judges under Fed. R. App. P. 35, and not under the mandatory and expedited provisions of section 437h.[4]

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[3] In summary, the questions pose the validity of the statute's expenditure prohibition under the first amendment, the contribution prohibition under the first amendment, and both under the equal protection and vagueness doctrines of the first and fifth amendments.

[4] The court's order (App. A, *infra*) reads in relevant part:

> Based upon a vote of a majority of circuit judges in regular active service, and pursuant to our discretionary authority under Fed.R.App. P. 35, it is ORDERED that this case be considered by the Court en banc, with oral argument.

(footnote continued)

On October 24, 1983, after briefing and oral argument, the *en banc* court issued its unanimous *per curiam* decision. The court stated that the case was being heard pursuant to Rule 35 and not under 2 U.S.C. § 437h. It noted that the panel's decision had been vacated, but adopted the panel's treatment of standing. On the merits, the court stated (J.S. App. 2):

> Viewing the substantive constitutional issues as being controlled by the Court's unanimous opinion in *Federal Election Commission* v. *National Right to Work Committee, et al.*, ___ U.S. ___, 103 S. Ct. 552, 74 L. Ed.2d 364 (1982) and for the reasons there stated, we find the limitations and prohibitions of which appellants complain to be constitutional.

Appellants filed their notice of appeal on October 28, 1983, and their jurisdictional statement on January 20, 1984.

ARGUMENT

The Commission requests the Court to dismiss the appeal taken by appellants Bondurant and Athens Lumber Company for lack of jurisdiction under 2 U.S.C. § 437h. Alternatively, the Court should affirm the judgment of the United States Court of Appeals for the Eleventh Circuit as correctly decided, and not requiring further argument. Sup. Ct. R. 16.1(c). If the Court dismisses the appeal and construes the jurisdictional statement as a petition for certiorari, it should deny the petition, because the issues presented are not sufficiently important to warrant this Court's review. Sup. Ct. R. 17.1(c).

1. This case is not properly before the Court under 2 U.S.C. § 437h. Section 437h(b) only permits direct ap-

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(footnote continued)
A notice sent to counsel with the court's order noted that the grant of a rehearing *en banc* automatically vacates the panel's opinion. *See* 11th Cir. R. 26(k).

peal to this Court from an *en banc* court of appeals decision "on a matter certified under subsection (a) of this section . . . ." Subsection (a) only provides for *en banc* consideration of constitutional questions certified to the appellate court by the district court. This Court has held that the grant of jurisdiction in 2 U.S.C. § 437h must be narrowly construed. *Bread Political Action Committee* v. *FEC*, 455 U.S. 577, 580-581 (1982). This case does not come within this Court's narrow appellate jurisdiction under 2 U.S.C. § 437h(b).

The district court in this case never certified any constitutional issues to the *en banc* court of appeals, as contemplated by 2 U.S.C. § 437h(a). Rather, it dismissed the case for lack of jurisdiction, and this decision was appealed to a panel of the court of appeals in the normal course, and not under the special procedures of 2 U.S.C. § 437h. The court of appeals panel reversed the district court's decision to dismiss the case, and itself submitted to the *en banc* court certified questions taken from appellants' district court pleadings. However, this was not adequate to invoke the court of appeals' jurisdiction under 2 U.S.C. § 437h, for that section is expressly limited to constitutional questions certified *by the district court.*[5]

Moreover, the panel's decision to submit constitutional questions to the *en banc* court was vacated by the court's order of February 7, 1983. (App. A, *infra*). When the case was reheard, the *en banc* court of appeals expressly stated that it was *not* taking the case under 2 U.S.C. § 437h, but rather under the discretionary authority of Fed. R. App. P. 35. Since the *en banc*

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[5] It is well established that the district court's function, which includes building a complete factual record and narrowly framing the questions to reflect only those constitutional issues unavoidably presented on the record, is far from a perfunctory one. *See California Medical Association* v. *FEC*, 453 U.S. 182, 193-94 n.14 (1981) (citing cases).

court of appeals did not have jurisdiction under 2 U.S.C. § 437h(a), this Court lacks jurisdiction of the appeal under 2 U.S.C. § 437h(b). Accordingly, review of the court's decision lies only by writ of certiorari in this Court, *see* 28 U.S.C. § 1254(1); Sup. Ct. R. 17.

This Court has previously dismissed an appeal filed pursuant to 2 U.S.C. § 437h(b) in similar circumstances. *FEC* v. *Lance*, 617 F.2d 365 (5th Cir. 1980), *aff'd*, 635 F.2d 1132 (5th Cir.) (en banc), *appeal dismissed and cert. denied*, 453 U.S. 917 (1981), was a subpoena enforcement suit brought by the Commission in which Lance defensively challenged the constitutionality of § 441b(a). A court of appeals panel referred Lance's constitutional claims to the *en banc* court pursuant to § 437h, but the *en banc* court decided to hear the case under Rule 35 rather than 2 U.S.C. § 437h. *FEC* v. *Lance*, 635 F.2d at 1136-1138. Lance filed a jurisdictional statement in this Court, invoking this Court's appellate jurisdiction under § 437h(b), but the Court dismissed the appeal for want of jurisdiction, and treating the papers filed as a certiorari petition, denied certiorari. *Lance* v. *FEC*, 453 U.S. 917. *See also Gifford* v. *Tiernan*, 670 F.2d 882 (9th Cir.), *appeal dismissed and cert. denied*, 459 U.S. 804 (1982).

In sum, notwithstanding the court of appeals panel's attempt to certify constitutional questions to the *en banc* court pursuant to 2 U.S.C. § 437h(a), the *en banc* court explicitly took and decided the case under Rule 35 and not under § 437h. Since the issues in this case were not properly "certified under subsection (a)", this Court does not have appellate jurisdiction under section 437h(b).

2. The *en banc* court of appeals correctly concluded that the constitutional issues raised in this case have been settled by *FEC* v. *National Right to Work Committee*, 459 U.S. ____, 103 S. Ct. 552 (1982). Therefore,

no substantial question is presented which warrants this Court's review. Sup. Ct. R. 17.1(c).

In *NRWC*, the Court rejected first and fifth amendment challenges to a subsection of section 441b, 2 U.S.C. § 441b(b)(4)(C), which restricts expenditures of corporate funds to solicit contributions to the corporation's separate segregated fund. The Court's discussion of the constitutional issues in *NRWC* plainly establishes that appellants' first and fifth amendment challenges to section 441b lack merit.

In *NRWC*, the Court observed that, although "[t]he statutory purpose of § 441(b) . . . is to prohibit contributions or expenditures by corporations or labor organizations in connection with federal elections," the statute "permits some participation of unions and corporations in the federal electoral process by allowing them to establish and pay the administrative expenses of 'separate segregated funds, which may be 'utilized for political purposes.' 2 U.S.C. § 441b(b)(2)(C)." 103 S. Ct. at 556.[6] The Court recognized that this statutory scheme was designed to serve at least two important governmental purposes: "to ensure that substantial aggregations of wealth amassed by the special advantages which go with the corporate form of organization should not be converted into political 'war chests' which could be used to incur political debts from legislators who are aided by the contributions;" and "to protect the individuals who have paid money into a corporation or union

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[6] A separate segregated fund can be controlled by the sponsoring union or corporation, whose officials can determine how the money raised by the fund will be spent, and which candidates will be supported. "[S]uch a fund must be separate from the sponsoring union [or corporation] only in the sense that there must be a strict segregation of its monies" from the organization's other funds. *Pipefitters* v. *United States*, 407 U.S. 385, 414-417 (1972). *See also Buckley* v. *Valeo*, 424 U.S. 1, 28 n.31 (1976).

for purposes other than the support of candidates from having that money used to support political candidates to whom they may be opposed." 103 S. Ct. at 559. Noting that "'[t]he importance of the governmental interest in preventing [the corruption of elected officials] has never been doubted,'" the Court found that these dual purposes were sufficient to overcome the corporation's first amendment objections to the statute. *Id.*, *quoting First National Bank of Boston* v. *Bellotti*, 435 U.S. 765, 788 n.26 (1978). Finally, the Court concluded that "the statutory prohibitions and exceptions we have considered are sufficiently tailored to these purposes" to avoid unnecessary infringement of first amendment rights. 103 S. Ct. at 560.

Thus, while acknowledging that "Congress aimed a part of its regulatory scheme at corporations," the Court concluded that "[t]he statute reflects a legislative judgment that the special characteristics of the corporate structure require particularly careful regulation," and refused to "second guess a legislative determination as to the need for prophylactic measures where corruption is the evil feared." 103 S. Ct. at 560.

Appellants completely ignore this Court's constitutional analysis in *NRWC*, and instead rely primarily upon minority opinions in cases decided before 1971, when the Act was amended to permit corporations to establish, maintain and control separate segregated funds. *See* 2 U.S.C. § 441b(b)(2)(C).[7] The Court in *NRWC* found that the provision for separate segregated funds permits political speech by corporations, 103

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[7] Appellants' reliance (J.S. 14) on *Democratic Party of the United States* v. *National Conservative Political Action Committee*, ___ F. Supp. ___ (E.D. Pa. Dec. 12, 1983), *juris. st. filed* Dec. 22, 1983 (U.S. No. 83-1032) is also misplaced. That court found *NRWC* not helpful because "it dealt with corporations, a creature of positive law that has traditionally been treated as sui generis." (sl. op. at 60).

S. Ct. at 556, and appellants have made no showing that Athens or any other corporation has been prevented by the Act from making its political views known through a separate segregated fund. Thus most of appellants' argument, which is based upon the erroneous assumption that § 441b totally prohibits corporate speech relating to federal elections, is misdirected.

Appellants' other arguments were also rejected by this Court in *NRWC*. Appellants argue (J.S. 18) that small corporations present no threat of corruption, but the Court in *NRWC* concluded:

> While § 441b restricts ... corporations and labor unions without great financial resources, as well as those more fortunately situated, we accept Congress's judgment that it is the potential for such influence that demands regulation.

103 S. Ct. at 560. Appellants argue too that corporations are discriminated against because some large business entities are not incorporated and "incorporation is at most a neutral fact" (J.S. 18-20). Again, however, they ignore this Court's conclusion in *NRWC* that it is permissible to treat corporations differently because "the special characteristics of the corporate structure require particularly careful regulation." 103 S. Ct. at 560.

> [T]he "differing structures and purposes" of different entities "may require different forms of regulation in order to protect the integrity of the electoral process."

Id., quoting California Medical Association v. FEC, 453 U.S. 182, 201 (1981).

Finally, appellants' contention (J.S. 21-24) that § 441b's prohibition of expenditures and contributions "in connection with any election" is impermissibly vague, also runs contrary to *NRWC*. As appellants acknowledge (J.S. 4-5), Athens Lumber Company only sought to make expenditures "advocating the election

or defeat of specific candidates." Since appellants' intended expenditures are clearly within the core of § 441b's prohibition, they cannot challenge it for vagueness even if "the statute may leave room for uncertainty at the periphery...." *NRWC*, 103 S. Ct. at 561, *citing Broadrick* v. *Oklahoma*, 413 U.S. 601 (1973) (parties within "hard core" of statute's prohibitions cannot complain of possible vagueness as applied to others).

In sum, appellants have presented no valid reasons for reconsidering this Court's unanimous decision only last term that the governmental purposes behind 2 U.S.C. § 441b are sufficiently compelling to overcome the constitutional objections raised by appellants here, notwithstanding appellants' odd suggestion (J.S. 13-14 n.2) that a unanimous decision of this Court deserves less weight because it was authored by a member of the Court who has dissented in other cases involving first amendment issues.

CONCLUSION

For the foregoing reasons, the Commission respectfully submits that this Court should dismiss the appeal for lack of jurisdiction or affirm the judgment as properly decided. Alternatively, construing the jurisdictional statement as a petition for certiorari, the Court should deny the petition.

Respectfully submitted,

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FEBRUARY 22, 1984

APPENDIX A

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 82-8102

ATHENS LUMBER COMPANY, INCORPORATED,
JOHN P. BONDURANT, PLAINTIFFS-APPELLANTS,

versus

FEDERAL ELECTION COMMISSION AND
WILLIAM F. SMITH, IN HIS OFFICIAL CAPACITY AS
ATTORNEY GENERAL OF THE UNITED STATES,
DEFENDANTS-APPELLEES.

Appeal from the United States District Court
for the Middle District of Georgia

ON PETITION FOR REHEARING AND PETITION
FOR REHEARING EN BANC

(Opinion October 22, 1983,
11 Cir., 198____, ____ F.2d ____)

(February 7, 1983)

Before: GODBOLD, Chief Judge, RONEY, TJOFLAT, HILL, FAY, VANCE, KRAVITCH, JOHNSON, HENDERSON, HATCHETT, and CLARK, Circuit Judges.

BY THE COURT:

Based upon a vote of a majority of circuit judges in regular active service, and pursuant to our discretionary authority under Fed. R. App. P. 35, it is

ORDERED that this case be consi ed by the Court en banc, with oral argument.

The clerk will set a briefing schedule. Judge Anderson is recused and did not participate in this decision.

UNITED STATES COURT OF APPEALS
ELEVENTH CIRCUIT
OFFICE OF THE CLERK

FEBRUARY 7, 1983

NORMAN E. ZOLLER
CLERK

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TO ALL COUNSEL OF RECORD

No. 82-8102—Athens Lumber Co., et al. *v.* Federal Election Commission, et al.

Enclosed is an order this day entered by the court directing that this case be reheard en banc *with* oral argument. Under Eleventh Circuit Rule 26 the effect of granting a rehearing en banc is to vacate the previous opinion and judgment of this court and to stay the mandate.

Pursuant to this court's direction for the clerk to specify a briefing schedule for the filing of en banc briefs, *appellants* will have until *Friday, March 11, 1983*, for filing of their en banc brief, with *appellees'* en banc briefs to be filed in this office not later than *Tuesday, April 12, 1983*. All en banc briefs must be on file in the clerks office by the specified dates shown above.

All parties are requested to furnish *fifteen (15) copies of their opening briefs, record excerpts and supplemental authorities* previously filed for the use of the en banc court by no later than *Friday, March 11, 1983*.

For your information, since the court has decided to consider this case under Fed.R.App.P. 35, it may consider all issues in the case and not just the constitutional issues set out in the panel opinion. See *Federal Elec-*

tion Commission v. *Lance*, 635 F.2d 1132, at 1138 (5th Cir. 1981).

Sincerely,

NORMAN E. ZOLLER, Clerk
BY Barbara J. Champian
BARBARA J. CHAMPIAN
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Clerk, U.S. District Court
Middle District of Georgia

APPENDIX B

2 U.S.C. § 441b. Contributions or expenditures by national banks, corporations, or labor organizations

(a) It is unlawful for any national bank, or any corporation organized by authority of any law of Congress, to make a contribution or expenditure in connection with any election to any political office, or in connection with any primary election or political convention or caucus held to select candidates for any political office, or for any corporation whatever, or any labor organization, to make a contribution or expenditure in connection with any election at which presidential and vice presidential electors or a Senator or Representative in, or a Delegate or Resident Commissioner to, Congress are to be voted for, or in connection with any primary election or political convention or caucus held to select candidates for any of the foregoing offices, or for any candidate, political committee, or other person knowingly to accept or receive any contribution prohibited by this section, or any officer or any director of any corporation or any national bank or any officer of any labor organization to consent to any contribution or expenditure by a corporation, national bank, or labor organizaton, as the case may be, prohibited by this section.

(b) (1) For the purposes of this section the term "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

(2) For purposes of this section and section 79*l*(h) of title 15, the term "contribution or expenditure" shall include any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value (except a loan of money by a national or State bank made in accordance with

the applicable banking laws and regulations and in the ordinary course of business) to any candidate, campaign committee, or political party or organization, in connection with any election to any of the offices referred to in this section, but shall not include—

(A) communications by a corporation to its stockholders and executive or administrative personnel and their families or by a labor organization to its members and their families on any subject;

(B) nonpartisan registration and get-out-the-vote campaigns by a corporation aimed at its stockholders and executive or administrative personnel and their families, or by a labor organization aimed at its members and their families; and

(C) the establishment, administration, and solicitation of contributions to a separate segregated fund to be utilized for political purposes by a corporation, labor organization, membership organization, cooperative, or corporation without capital stock.

(3) It shall be unlawful—

(A) for such a fund to make a contribution or expenditure by utilizing money or anything of value secured by physical force, job discrimination, financial reprisals, or the threat of force, job discrimination, or financial reprisal; or by dues, fees, or other moneys required as a condition of membership in a labor organization or as a condition of employment, or by moneys obtained in any commercial transaction;

(B) for any person soliciting an employee for a contribution to such a fund to fail to inform such employee of the political purposes of such fund at the time of such solicitation; and

(C) for any person soliciting an employee for a contribution to such a fund to fail to inform such employee, at the time of such solicitation, of his

right to refuse to so contribute without any reprisal.

(4) (A) Except as provided in subparagraphs (B), (C), and (D), it shall be unlawful—

(i) for a corporation, or a separate segregated fund established by a corporation, to solicit contributions to such a fund from any person other than its stockholders and their families and its executive or administrative personnel and their families, and

(ii) for a labor organization, or a separate segregated fund established by a labor organization, to solicit contributions to such a fund from any person other than its members and their families.

(B) It shall not be unlawful under this section for a corporation, a labor organization, or a separate segregated fund established by such corporation or such labor organization, to make 2 written solicitations for contributions during the calendar year from any stockholder, executive or administrative personnel, or employee of a corporation or the families of such persons. A solicitation under this subparagraph may be made only by mail addressed to stockholders, executive or administrative personnel, or employees at their residence and shall be so designed that the corporation, labor organization, or separate segregated fund conducting such solicitation cannot determine who makes a contribution of $50 or less as a result of such solicitation and who does not make such a contribution.

(C) This paragraph shall not prevent a membership organization, cooperative, or corporation without capital stock, or a separate segregated fund established by a membership organization, cooperative, or corporation without capital stock, from soliciting contributions to such a fund from members of such organization, cooperative, or corporation without capital stock.

(D) This paragraph shall not prevent a trade association or a separate segregated fund established by a trade association from soliciting contributions from stockholders and executive or administrative personnel of the member corporations of such trade associations and the families of such stockholders or personnel to the extent that such solicitation of such stockholders and personnel, and their families, has been separately and specifically approved by the member corporation involved, and such member corporation does not approve any such solicitation by more than one such trade association in any calendar year.

(5) Notwithstanding any other law, any method of soliciting voluntary contributions or of facilitating the making of voluntary contributions to a separate segregated fund established by a corporation, permitted by law to corporations with regard to stockholders and executive or administrative personnel, shall also be permitted to labor organizations with regard to their members.

(6) Any corporation, including its subsidiaries, branches, divisions, and affiliates, that utilizes a method of soliciting voluntary contributions or facilitating the making of voluntary contributions, shall make available such method, on written request and at a cost sufficient only to reimburse the corporation for the expenses incurred thereby, to a labor organization representing any members working for such corporation, its subsidiaries, branches, divisions, and affiliates.

(7) For purposes of this section, the term "executive or administrative personnel" means individuals employed by a corporation who are paid on a salary, rather than hourly, basis and who have policymaking, managerial, professional, or supervisory responsibilities.